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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन
की रूप में रखा जा सके ।

Separate paging is given to this Part in order that it may be filed
as a separate compilation.

RAJYA SABHA

The following Bill was introduced in the Rajya Sabha on the 24th
July, 1989:—

BILL NO. XVI OF 1989

A Bill further to amend the Employees' State Insurance Act, 1948.

BE it enacted by Parliament in the Fortieth Year of the Republic of
India as follows:—

1. (1) This Act may be called the Employees' State Insurance
(Amendment) Act, 1989.

Short
title
and com-
mence-
ment.

(2) It shall come into force on such date or dates as the Central
Government may, by notification in the Official Gazette, appoint, and
different dates may be appointed for different provisions of this Act and
for different States or for different parts thereof and any reference in
any such provision to the commencement of this Act shall be con-
strued in relation to any State or part thereof as a reference to the
coming into force of that provision in that State or part thereof.

34 of
1948.

2. In section 1 of the Employees' State Insurance Act, 1948 (here-
inafter referred to as the principal Act),—

Amend-
ment of
section 1.

(i) in sub-section (4), the following proviso shall be inserted,
namely:—

“Provided that nothing contained in this sub-section shall
apply to a factory or establishment belonging to or under the

control of the Government whose employees are otherwise in receipt of benefits substantially similar or superior to the benefits provided under this Act.”;

(ii) in sub-section (5), the following proviso shall be inserted, namely:—

“Provided that where the provisions of this Act have been brought into force in any part of a State, the said provisions shall stand extended to any such establishment or class of establishments within that part if the provisions have already been extended to similar establishment or class of establishments in another part of that State.”;

(iii) after sub-section (5), the following sub-section shall be inserted, namely:—

“(6) A factory or an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below the limit specified by or under this Act or the manufacturing process therein ceases to be carried on with the aid of power.”.

Amend-
ment of
section 2.

3. In section 2 of the principal Act,—

(i) clause (2) shall be omitted;

(ii) clause (5) shall be omitted;

(iii) in clause (6A),—

(a) in sub-clause (i), for the words “daughter or a widowed mother; and”, the word “daughter,” shall be substituted;

(b) after sub-clause (i), the following sub-clause shall be inserted, namely:—

“(ia) a widowed mother;”;

(iv) in clause (9),—

(a) for the words “; but does not include”, the words and figures “or any person engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961, or under the standing orders of the establishment; but does not include” shall be substituted;

(b) in sub-clause (b), for the words “one thousand and six hundred rupees a month”, at both the places where they occur, the words “such wages as may be prescribed by the Central Government” shall be substituted;

(v) for clauses (11) and (12), the following clauses shall be substituted, namely:—

“(11) “family” means all or any of the following relatives of an insured person, namely:—

(i) a spouse;

(ii) a minor legitimate or adopted child dependent upon the insured person;

52 of 1961.

(iii) a child who is wholly dependent on the earnings of the insured person and who is—

(a) receiving education, till he or she attains the age of twenty-one years,

(b) an unmarried daughter;

(iv) a child who is infirm by reason of any physical or mental abnormality or injury and is wholly dependent on the earnings of the insured person, so long as the infirmity continues;

(v) dependent parents;

(12) "factory" means any premises including the precincts thereof—

(a) whereon ten or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power or is ordinarily so carried on, or

(b) whereon twenty or more persons are employed or were employed for wages on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power or is ordinarily so carried on,

but does not include a mine subject to the operation of the Mines Act, 1952 or a railway running shed;'

35 of 1952.

(vi) in clause (13), the words "and includes a contractor" shall be inserted at the end;

(vii) after clause (14A), the following clause shall be inserted, namely:—

'(14AA) "manufacturing process" shall have the meaning assigned to it in the Factories Act, 1948;'

63 of 1948.

(viii) after clause (15B), the following clause shall be inserted, namely:—

'(15C) "power" shall have the meaning assigned to it in the Factories Act, 1948;'

63 of 1948.

(ix) after clause (19), the following clause shall be inserted, namely:—

'(19A) "seasonal factory", means a factory which is exclusively engaged in one or more of the following manufacturing processes, namely, cotton ginning, cotton or jute pressing, decortication of groundnuts, the manufacture of coffee, indigo, lac, rubber, sugar (including *gur*) or tea or any manufacturing process which is incidental to or connected with any of the aforesaid processes and includes a factory which is engaged for a period not exceeding seven months in a year—

(a) in any process of blending, packing or repacking of tea or coffee; or

(b) in such other manufacturing process as the Central Government may, by notification in the Official Gazette, specify;’.

Substitution of “nominated”, etc., by “appointed”, etc.

4. In Chapter II of the principal Act, for the words “nominated”, “nomination”, “nominating”, “renomination” and “nominate”, wherever they occur, the words “appointed”, “appointment”, “appointing”, “re-appointment” and “appoint” shall respectively be substituted.

Amendment of section 4.

5. In section 4 of the principal Act, in clauses (f) and (g), for the word “five”, the word “ten” shall be substituted.

Amendment of section 16.

6. In section 16 of the principal Act,—

(i) for sub-section (1), the following sub-section shall be substituted, namely:—

“(1) The Central Government may, in consultation with the Corporation, appoint a Director General and a Financial Commissioner.”;

(ii) in sub-section (3), for the words “The Principal Officers”, the words “The Director General and the Financial Commissioner” shall be substituted;

(iii) in sub-section (4),—

(a) for the words “A Principal Officer”, the words “The Director General or the Financial Commissioner” shall be substituted;

(b) for the words “Principal Officer”, the words “Director General or Financial Commissioner” shall be substituted;

(iv) in sub-section (5), for the words “A Principal Officer”, the words “The Director General or the Financial Commissioner” shall be substituted;

(v) in sub-sections (6) and (7) for the words “a Principal Officer”, the words “the Director General or the Financial Commissioner” shall be substituted.

Amendment of section 17.

7. In section 17 of the principal Act,—

(i) in sub-section (1), for the words “exceeds two thousand and two hundred fifty rupees”, the words “exceeds such salary as may be prescribed by the Central Government” shall be substituted;

(ii) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) (a) The method of recruitment, salary and allowances, discipline and other conditions of service of the members of the staff of the Corporation shall be such as may be specified in the regulations made by the Corporation in accordance with the rules and orders applicable to the officers and employees of the Central Government drawing corresponding scales of pay:

Provided that where the Corporation is of the opinion that it is necessary to make a departure from the said rules or orders in respect of any of the matters aforesaid, it shall obtain the prior approval of the Central Government.

(b) In determining the corresponding scales of pay of the members of the staff under clause (a), the Corporation shall have regard to the educational qualifications, method of recruitment, duties and responsibilities of such officers and employees under the Central Government and in case of any doubt, the Corporation shall refer the matter to the Central Government whose decision thereon shall be final.”;

(iii) in sub-section (3),—

(a) after the words “to posts”, the brackets and words “(other than medical posts)” shall be inserted;

(b) in the proviso, for the words “an aggregate period”, the words “a period” shall be substituted;

(c) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that any such officiating or temporary appointment shall not confer any claim for regular appointment and the services rendered in that capacity shall not count towards seniority or minimum qualifying service specified in the regulations for promotion to next higher grade.”.

8. In section 23 of the principal Act, for the words “Principal Officers”, the words “Director General and the Financial Commissioner” shall be substituted.

Amendment of section 23.

9. After section 28 of the principal Act, the following section shall be inserted, namely:—

Insertion of new section 28A.

“28A. The types of expenses which may be termed as administrative expenses and the percentage of the income of the Corporation which may be spent for such expenses shall be such as may be prescribed by the Central Government and the Corporation shall keep its administrative expenses within the limit so prescribed by the Central Government.”.

Administrative expenses.

10. For section 34 of the principal Act, the following section shall be substituted, namely:—

Substitution of new section for section 34.

“34. (1) The accounts of the Corporation shall be audited annually by the Comptroller and Auditor-General of India and any expenditure incurred by him in connection with such audit shall be payable by the Corporation to the Comptroller and Auditor-General of India.

Audit.

(2) The Comptroller and Auditor-General of India and any person appointed by him in connection with the audit of the accounts of the Corporation shall have the same rights and privileges and authority in connection with such audit as the Comptroller and Auditor-General has, in connection with the audit of Government accounts and, in particular, shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Corporation.

(3) The accounts of the Corporation as certified by the Comptroller and Auditor-General of India or any other person appointed by him in this behalf together with the audit report thereon shall be forwarded to the Corporation which shall forward the same to the Central Government along with its comments on the report of the Comptroller and Auditor-General."

Amend-
ment of
section
36.

11. In section 36 of the principal Act,—

(i) for the words "auditor's report thereon", the words "the report of the Comptroller and Auditor-General of India thereon and the comments of the Corporation on such report" shall be substituted;

(ii) the words "and published in the Official Gazette" shall be omitted.

Amend-
ment of
section
39.

12. In section 39 of the principal Act,—

(i) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) The contributions shall be paid at such rates as may be prescribed by the Central Government:

Provided that the rates so prescribed shall not be more than the rates which were in force immediately before the commencement of the Employees' State Insurance (Amendment) Act, 1989."

(ii) after sub-section (4), the following sub-section shall be inserted, namely:—

'(5) (a) If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in the regulations till the date of its actual payment:

Provided that higher interest specified in the regulations shall not exceed the lending rate of interest charged by any scheduled bank.

(b) Any interest recoverable under clause (a) may be recovered as an arrear of land revenue or under section 45C to section 45-I.

2 of 1934.

Explanation.—In this sub-section, “scheduled bank” means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934.

13. In section 41 of the principal Act, after sub-section (1), the following sub-section shall be inserted, namely:—

Amendment of section 41.

“(1A) The immediate employer shall maintain a register of employees employed by or through him as provided in the regulations and submit the same to the principal employer before the settlement of any amount payable under sub-section (1).”.

14. In section 42 of the principal Act, in sub-section (1).—

Amendment of section 42.

(i) for the words “six rupees”, the words “such wages as may be prescribed by the Central Government” shall be substituted;

(ii) in the *Explanation*, for the words “in the manner specified in the First Schedule”, the words “in such manner as may be prescribed by the Central Government” shall be substituted.

15. In section 45A of the principal Act,—

Amendment of section 45A.

(i) in sub-section (1).—

(a) for the word “obstructed”, the words “prevented in any manner” shall be substituted;

(b) the following proviso shall be added, namely:—

“Provided that no such order shall be passed by the Corporation unless the principal or immediate employer or the person in charge of the factory or establishment has been given a reasonable opportunity of being heard.”;

(ii) in sub-section (2), the following shall be added at the end, namely:—

“or the recovery under section 45C to section 45-I”.

16. In Chapter IV of the principal Act, after section 45B, the following sections shall be inserted, namely:—

Insertion of new sections after section 45B.

‘45C. (1) Where any amount is in arrear under this Act, the authorised officer may issue, to the Recovery Officer, a certificate under his signature specifying the amount of arrears and the Recovery Officer, on receipt of such certificate, shall proceed to recover the amount specified therein from the factory or establishment or, as the case may be, the principal or immediate employer by one or more of the modes mentioned below:—

Issue of certificate to the Recovery Officer.

(a) attachment and sale of the movable or immovable property of the factory or establishment or, as the case may be, the principal or immediate employer;

(b) arrest of the employer and his detention in prison;

(c) appointing a receiver for the management of the movable or immovable properties of the factory or establishment or, as the case may be, the employer;

Provided that the attachment and sale of any property under this section shall first be effected against the properties of the factory or establishment and where such attachment and sale is insufficient for recovering the whole of the amount of arrears specified in the certificate, the Recovery Officer may take such proceedings against the property of the employer for recovery of the whole or any part of such arrears.

(2) The authorised officer may issue a certificate under sub-section (1) notwithstanding that proceedings for recovery of the arrears by any other mode have been taken.

45D. (1) The authorised officer may forward the certificate referred to in section 45C to the Recovery Officer within whose jurisdiction the employer—

(a) carries on his business or profession or within whose jurisdiction the principal place of his factory or establishment is situate; or

(b) resides or any movable or immovable property of the factory or establishment or the principal or immediate employer is situate.

(2) Where a factory or an establishment or the principal or immediate employer has property within the jurisdiction of more than one Recovery Officers and the Recovery Officer to whom a certificate is sent by the authorised officer—

(a) is not able to recover the entire amount by the sale of the property, movable or immovable, within his jurisdiction, or

(b) is of the opinion that for the purpose of expediting or securing the recovery of the whole or any part of the amount, it is necessary so to do,

he may send the certificate, or, where only a part of the amount is to be recovered, a copy of the certificate certified in the manner prescribed by the Central Government and specifying the amount to be recovered to the Recovery Officer within whose jurisdiction the factory or establishment or the principal or immediate employer has property or the employer resides, and thereupon that Recovery Officer shall also proceed to recover the amount due under this section as if the certificate or the copy thereof had been the certificate sent to him by the authorised officer.

45E.(1) When the authorised officer issues a certificate to a Recovery Officer under section 45C, it shall not be open to the factory or establishment or the principal or immediate employer to dispute before the Recovery Officer the correctness, of the amount, and no objection to the certificate on any other ground shall also be entertained by the Recovery Officer.

Recovery
Officer
to whom
certi-
ficate
is to
be for-
warded.

Validity
of certi-
ficate and
amend-
ment
thereof,

(2) Notwithstanding the issue of a certificate to a Recovery Officer, the authorised officer shall have power to withdraw the certificate or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Recovery Officer.

(3) The authorised officer shall intimate to the Recovery Officer any orders withdrawing or cancelling a certificate or any correction made by him under sub-section (2) or any amendment made under sub-section (4) of section 45F.

45F. (1) Notwithstanding that a certificate has been issued to the Recovery Officer for the recovery of any amount, the authorised officer may grant time for the payment of the amount and thereupon the Recovery Officer shall stay the proceedings until the expiry of the time so granted.

Stay of proceedings under certificate and amendment or withdrawal thereof.

(2) Where a certificate for the recovery of amount has been issued, the authorised officer shall keep the Recovery Officer informed of any amount paid or time granted for payment, subsequent to the issue of such certificate.

(3) Where the order giving rise to a demand of amount for which a certificate for recovery has been issued has been modified in appeal or other proceedings under this Act, and as a consequence thereof, the demand is reduced but the order is the subject-matter of a further proceeding under this Act, the authorised officer shall stay the recovery of such part of the amount of the certificate as pertains to the said reduction for the period for which the appeal or other proceeding remains pending.

(4) Where a certificate for the recovery of amount has been issued and subsequently the amount of the outstanding demand is reduced as a result of an appeal or other proceeding under this Act, the authorised officer shall when the order which was the subject-matter of such appeal or other proceeding has become final and conclusive, amend the certificate or withdraw it, as the case may be.

45G. (1) Notwithstanding the issue of a certificate to the Recovery Officer under section 45C, the Director General or any other officer authorised by the Corporation may recover the amount by any one or more of the modes provided in this section.

modes of recovery.

(2) If any amount is due from any person to any factory or establishment or, as the case may be, the principal or immediate employer who is in arrears, the Director General or any other officer authorised by the Corporation in this behalf may require such person to deduct from the said amount the arrears due from such factory or establishment or, as the case may be, the principal or immediate employer under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Corporation:

Provided that nothing in this sub-section shall apply to any part of the amount exempt from attachment in execution of a decree of a civil court under section 60 of the Code of Civil Procedure, 1908.

(3) (i) The Director General or any other officer authorised by the Corporation in this behalf may, at any time or from time to time, by notice in writing, require any person from whom money is due or may become due to the factory or establishment or, as the case may be, the principal or immediate employer or any person who holds or may subsequently hold money for or on account of the factory or establishment or, as the case may be the principal or immediate employer, to pay to the Director General either forthwith upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due from the factory or establishment or, as the case may be, the principal or immediate employer in respect of arrears or the whole of the money when it is equal to or less than that amount.

(ii) A notice under this sub-section may be issued to any person who holds or may subsequently hold any money for or on account of the principal or immediate employer jointly with any other person and for the purposes of this sub-section, the shares of the joint-holders in such account shall be presumed until the contrary is proved to be equal.

(iii) A copy of the notice shall be forwarded to the principal or immediate employer at his last address known to the Director General or, as the case may be, the officer so authorised and in the case of a joint account to all the joint-holders at their last addresses known to the Director General or the officer so authorised.

(iv) Save as otherwise provided in this sub-section, every person to whom a notice is issued under this sub-section shall be bound to comply with such notice, and, in particular, where any such notice is issued to a post office, bank or an insurer, it shall not be necessary for any pass book, deposit receipt, policy or any other document to be produced for the purpose of any entry, endorsement or the like being made before payment is made notwithstanding any rule, practice or requirement to the contrary.

(v) Any claim respecting any property in relation to which a notice under this sub-section has been issued arising after the date of the notice shall be void as against any demand contained in the notice.

(vi) Where a person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due to the principal or immediate employer or that he does not hold any money for or on account of the principal or immediate employer, then, nothing contained in this sub-section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Director General or the officer so authorised to the extent of his own liability to the principal or immediate employer on the date of the notice, or to the extent of the principal or immediate employer's liability for any sum due under this Act, whichever is less.

(vii) The Director General or the officer so authorised may, at any time or from time to time amend or revoke any notice issued under this sub-section or extend the time for making any payment in pursuance of such notice.

(viii) The Director General or the officer so authorised shall grant a receipt for any amount paid in compliance with a notice issued under this sub-section and the person so paying shall be fully discharged from his liability to the principal or immediate employer to the extent of the amount so paid.

(ix) Any person discharging any liability to the principal or immediate employer after the receipt of a notice under this sub-section shall be personally liable to the Director General or the officer so authorised to the extent of his own liability to the principal or immediate employer so discharged or to the extent of the principal or immediate employer's liability for any sum due under this Act, whichever is less.

(x) If the person to whom a notice under this sub-section is sent fails to make payment in pursuance thereof to the Director General or the officer so authorised, he shall be deemed to be a principal or immediate employer in default in respect of the amount specified in the notice and further proceedings may be taken against him for the realisation of the amount as if it were an arrear due from him, in the manner provided in sections 45C to 45F and the notice shall have the same effect as an attachment of a debt by the Recovery Officer in exercise of his powers under section 45C.

(4) The Director General or the officer authorised by the Corporation in this behalf may apply to the court in whose custody there is money belonging to the principal or immediate employer for payment to him of the entire amount of such money, or if it is more than the amount due, an amount sufficient to discharge the amount due.

(5) The Director General or any officer of the Corporation may, if so authorised by the Central Government by general or special order, recover any arrears of amount due from a factory or an establishment or, as the case may be, from the principal or immediate employer by distraint and sale of its or his movable property in the manner laid down in the Third Schedule to the Income-tax Act, 1961.

43 of 1961.

45H. The provisions of the Second and Third Schedules to the Income-tax Act, 1961 and the Income-tax (Certificate Proceedings) Rules, 1962, as in force from time to time, shall apply with necessary modifications, as if the said provisions and the rules referred to the arrears of the amount of contributions, interests or damages under this Act instead of to the income-tax;

Applica-
tion of
certain
provi-
sions of
the
Income-
tax Act,

43 of 1961.

Provided that any reference in the said provisions and the rules to the "assessee" shall be construed as a reference to a factory or an establishment or the principal or immediate employer under this Act.

Defini-
tions,

45-I. For the purposes of sections 45C to 45H,—

(a) “authorised officer” means the Director General, Insurance Commissioner, Joint Insurance Commissioner, Regional Director or such other officer as may be authorised by the Central Government, by notification in the Official Gazette;

(b) “Recovery Officer” means any officer of the Central Government, State Government or the Corporation, who may be authorised by the Central Government, by notification in the Official Gazette, to exercise the powers of a Recovery Officer under this Act.’

Amend-
ment of
section
46.

17. In section 46 of the principal Act, in sub-section (1),—

(i) in clause (f), for the words “funeral benefit”, the words “funeral expenses” shall be substituted;

(ii) in the proviso, for the words “one hundred rupees”, the words “such amount as may be prescribed by the Central Government” shall be substituted.

Omission
of sec-
tion 47.

18. Section 47 of the principal Act shall be omitted.

Substitu-
tion of
new sec-
tions for
sections
49 and 50.

19. For sections 49 and 50 of the principal Act, the following sections shall be substituted, namely:—

Sick-
ness
benefit.

“49. The qualification of a person to claim sickness benefit, the conditions subject to which such benefit may be given, the rate and period thereof shall be such as may be prescribed by the Central Government.

Mater-
nity
benefit.

50. The qualification of an insured woman to claim maternity benefit, the conditions subject to which such benefit may be given, the rates and period thereof shall be such as may be prescribed by the Central Government.”.

Amend-
ment of
section
51.

20. In section 51 of the principal Act,—

(i) in the opening portion, the words “and the regulations, if any” shall be omitted;

(ii) in clause (a), for the words “for the period of such disablement in accordance with the provisions of the First Schedule”, the words “at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government” shall be substituted;

(iii) in clause (b), for the words “for such disablement in accordance with the provisions of the First Schedule”, the words “at such and for such periods and subject to such conditions as may be prescribed by the Central Government” shall be substituted;

(iv) the proviso shall be omitted.

21. In section 52 of the principal Act,—

Amend-
ment of
section
52.

(a) in sub-section (1),—

(i) for the words “in accordance with the provisions of the First Schedule”, the words “at such rates and for such periods and subject to such conditions as may be prescribed by the Central Government” shall be substituted;

(ii) for the words, brackets and figure “sub-clause (i) and”, the words, brackets, figures and letter “sub-clause (i), sub-clause (ia) and” shall be substituted;

(b) in sub-section (2), for the words “in accordance with the provisions of the First Schedule”, the words “at such rates and for such period and subject to such conditions as may be prescribed by the Central Government” shall be substituted.

22. In section 54A of the principal Act, after sub-section (2), the following provisos shall be inserted, namely:—

Amend-
ment of
section
54A.

“Provided that no appeal by an insured person shall lie under this sub-section if such person has applied for commutation of disablement benefit on the basis of the decision of the medical board and received the commuted value of such benefit:

Provided further that no appeal by the Corporation shall lie under this sub-section if the Corporation paid the commuted value of the disablement benefit on the basis of the decision of the medical board.”.

23. In section 56 of the principal Act, in sub-section (3), after the existing proviso, the following shall be inserted, namely:—

Amend-
ment of
section
56.

‘Provided further that an insured person who ceases to be in insurable employment on account of permanent disablement shall continue, subject to payment of contribution and such other conditions as may be prescribed by the Central Government, to receive medical benefit till the date on which he would have vacated the employment on attaining the age of superannuation had he not sustained such permanent disablement:

Provided also that an insured person, who has attained the age of superannuation, and his spouse shall be eligible to receive medical benefit subject to payment of contribution and such other conditions as may be prescribed by the Central Government.

Explanation.—In this section, “superannuation”, in relation to an insured person, means the attainment by that person of such age as is fixed in the contract or conditions of service as the age on the attainment of which he shall vacate the insurable employment or the age of sixty years where no such age is fixed and the person is no more in the insurable employment.’.

Amendment of section 62.

24. In section 62 of the principal Act, for the words "periodical payment", the words "disablement benefit" shall be substituted.

Substitution of new section for section 63.

25. For section 63 of the principal Act, the following section shall be substituted, namely:—

Persons not entitled to receive benefit in certain cases.

"63. Save as may be provided by the regulations, no person shall be entitled to sickness benefit or disablement benefit for temporary disablement on any day on which he works or remains on leave or on a holiday in respect of which he receives wages or on any day on which he remains on strike."

Amendment of section 64.

26. In section 64 of the principal Act, in clause (d), the words "or sick visitor" shall be omitted.

Amendment of section 70.

27. In section 70 of the principal Act, in sub-section (3), the following shall be added at the end, namely:—

"or under section 45C to section 45-I".

Amendment of section 71.

28. In section 71 of the principal Act, for the words, brackets and figures "Except as provided in the proviso to sub-section (2) of section 50, if a person dies", the words "If a person dies" shall be substituted.

Amendment of section 75.

29. In section 75 of the principal Act, after sub-section (2A), the following sub-section shall be inserted, namely:—

"(2B) No matter which is in dispute between a principal employer and the Corporation in respect of any contribution or any other dues shall be raised by the principal employer in the Employees' Insurance Court unless he has deposited with the Court fifty per cent. of the amount due from him as claimed by the Corporation:

Provided that the Court may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this sub-section."

Amendment of section 77.

30. In section 77 of the principal Act, in sub-section (1A), in the *Explanation*, for clause (b), the following clauses shall be substituted, namely:—

"(b) the cause of action in respect of a claim by the Corporation for recovering contributions (including interest and damages) from the principal employer shall be deemed to have arisen on the date on which such claim is made by the Corporation for the first time:

Provided that no claim shall be made by the Corporation after five years of the period to which the claim relates;

(c) the cause of action in respect of a claim by the principal employer for recovering contributions from an immediate employer shall not be deemed to arise till the date by which the evidence of contributions having been paid is due to be received by the Corporation under the regulations."

9 of 1908.
36 of 1963.

31. In section 82 of the principal Act, in sub-section (4), for the words and figures "Indian Limitation Act, 1908", the words and figures "Limitation Act, 1963" shall be substituted.

Amend-
ment of
section
82.

32. In section 84 of the principal Act,—

(i) for the words "three months", the words "six months" shall be substituted;

Amend-
ment of
section
84.

(ii) for the words "five hundred", the words "two thousand" shall be substituted;

(iii) the following proviso shall be inserted at the end, namely:—

"Provided that where an insured person is convicted under this section, he shall not be entitled for any cash benefit under this Act for such period as may be prescribed by the Central Government."

33. In section 85 of the principal Act, for clauses (i) and (ii), the following clauses shall be substituted, namely:—

Amend-
ment of
section
85.

"(i) where he commits an offence under clause (a), with imprisonment for a term which may extend to three years but—

(a) which shall not be less than one year, in case of failure to pay the employee's contribution which has been deducted by him from the employee's wages and shall also be liable to fine of ten thousand rupees;

(b) which shall not be less than six months, in any other case and shall also be liable to fine of five thousand rupees;

Provided that the Court may, for any adequate and special reasons to be recorded in the judgment, impose a sentence of imprisonment for a lesser term;

(ii) where he commits an offence under any of the clauses (b) to (g) (both inclusive), with imprisonment for a term which may extend to one year or with fine which may extend to four thousand rupees, or with both."

34. In section 85A of the principal Act,—

Amend-
ment of
section
85A.

(i) for the words "one year, or with fine which may extend to two thousand rupees, or with both", the words "two years and with fine of five thousand rupees" shall be substituted;

(ii) in the proviso, for the words "one year but which shall not be less than three months and shall also be liable to fine which may extend to four thousand rupees", the words "five years but which shall not be less than two years and shall also be liable to fine of twenty-five thousand rupees" shall be substituted.

Amend-
ment of
section
85B.

35. In section 85B of the principal Act,—

(a) in sub-section (1),—

(i) for the words “from the employer such damages not exceeding the amount of arrears as it may think fit to impose”, the words “from the employer by way of penalty such damages not exceeding the amount of arrears as may be specified in the regulations” shall be substituted;

(ii) after the proviso, the following proviso shall be inserted, namely:—

“Provided further that the Corporation may reduce or waive the damages recoverable under this section in relation to an establishment which is a sick industrial company in respect of which a scheme for rehabilitation has been sanctioned by the Board for Industrial and Financial Reconstruction established under section 4 of the Sick Industrial Companies (Special Provisions) Act, 1985, subject to such terms and conditions as may be specified in regulations.”;

1 of 1986.

(b) in sub-section (2), the following shall be added at the end, namely:—

“or under section 45C to section 45-I”.

Amend-
ment of
section
85C.

36. In section 85C of the principal Act,—

(i) in sub-section (2), the following shall be added at the end namely:—

“and to furnish the return relating to such contributions”;

(ii) in sub-section (2), for the words “one hundred”, the words “one thousand” shall be substituted.

Amend
ment of
section
86.

37. In section 86 of the principal Act,—

(i) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the First Class shall try any offence under this Act.”;

(ii) in sub-section (3), the words “, within six months of the date on which the offence is alleged to have been committed” shall be omitted.

Insert-
tion of
new
section
86A.

38. After section 86 of the principal Act, the following section shall be inserted, namely:—

Offences
by com-
panies.

‘86A. (1) If the person committing an offence under this Act is a company, every person, who at the time the offence was committed was incharge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any person liable to any punishment, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director or manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(i) “company” means any body corporate and includes a firm and other associations of individuals; and

(ii) “director” in relation to—

(a) a company, other than a firm, means the managing director or a whole-time director;

(b) a firm means a partner in the firm.’

39. In section 90 of the principal Act, the words “the Government or” shall be omitted.

Amend-
ment of
section
90.

40. After section 91A of the principal Act, the following sections shall be inserted, namely:—

Insert-
tion of
new sec-
tions
91B
and
91C.

“91B. If the Central Government is satisfied that the benefits under this Act are being misused by insured persons in a factory or establishment, that Government may, by order, published in the Official Gazette, disentitle such persons from such of the benefits as it thinks fit:

Misuse
of bene-
fits.

Provided that no such order shall be passed unless a reasonable opportunity of being heard is given to the concerned factory or establishment, insured persons and the trade unions registered under the Trade Unions Act, 1926 having members in the factory or establishment.

91C. Subject to the conditions as may be prescribed by the Central Government, where the Corporation is of opinion that the amount of contribution, interest and damages due to the Corporation is irrecoverable, the Corporation may sanction the writing off finally of the said amount.”

Writing
off of
losses.

Amend-
ment of
section
92.

41. Section 92 of the principal Act shall be renumbered as sub-section (1) thereof and after sub-section (1) as so renumbered, the following sub-section shall be inserted, namely:—

“(2) The Central Government may, from time to time, give such directions to the Corporation as it may think fit for the efficient administration of the Act, and if any such direction is given, the Corporation shall comply with such direction.”.

Amend-
ment of
section
94.

42. In section 94 of the principal Act, for the words and figures “or under section 230 of the Indian Companies Act, 1913”, the words and figures “or under section 530 of the Companies Act, 1956” shall be substituted.

7 of 1913.
1 of 1956.

Amend-
ment of
section
95.

43. In section 95 of the principal Act, in sub-section (2),—

(i) clause (a) shall be relettered as clause (ac) thereof and before clause (ac) as so relettered, the following clauses shall be inserted, namely:—

“(a) the limit of wages beyond which a person shall not be deemed to be an employee;

(ab) the limit of maximum monthly salary for the purpose of sub-section (1) of section 17;”;

(ii) in clause (ac) as so relettered, for the word “nominations”, the word “appointments” shall be substituted;

(iii) in clause (d), for the words “Principal Officers”, the words “Director General and the Financial Commissioner” shall be substituted;

(iv) clause (ee) shall be relettered as clause (ei) thereof and before clause (ei) as so relettered, the following clauses shall be inserted, namely:—

“(ea) the types of expenses which may be termed as administrative expenses, the percentage of income of the Corporation which may be spent for such expenses;

(eb) the rates of contributions and limits of wages below which employees are not liable to pay contribution;

(ec) the manner of calculation of the average daily wage;

(ed) the manner of certifying the certificate to recover amount by the Recovery Officer;

(ee) the amount of funeral expenses;

(ef) the qualifications, conditions, rates and period of sickness benefit, maternity benefit, disablement benefit and dependents benefit;

(eg) the conditions for grant of medical benefits for insured persons who cease to be in insurable employment on account of permanent disablement;

(eh) the conditions for grant of medical benefits for persons who have attained the age of superannuation;”;

(v) in clause (o), the word "and" occurring at the end shall be omitted;

(vi) after clause (o), the following clause shall be inserted, namely:—

"(oa) the period of non-entitlement for cash benefit in case of conviction of an insured person;"

44. In section 97 of the principal Act,—

Amend-
ment of
section 97.

(i) in sub-section (1), the words "with the prior approval of the Central Government and" shall be omitted;

(ii) in sub-section (2),—

(a) for clause (iiia), the following clause shall be substituted, namely:—

"(iiia) the rate of interest higher than twelve per cent. on delayed payment of contributions;"

(b) after clause (iv), the following clauses shall be inserted, namely:—

"(iva) the register of employees to be maintained by the immediate employer;

(ivb) the entitlement of sickness benefit or disablement benefit for temporary disablement on any day on which person works or remains on leave or on holiday and in respect of which he receives wages or for any day on which he remains on strike;"

(c) clause (xv) shall be omitted;

(d) after clause (xvii), the following clauses shall be inserted, namely:—

"(xviii) the amount of damages to be recovered as penalty;

(xviiib) the terms and conditions for reduction or waiver of damages in relation to a sick industrial company;"

(e) in clause (xxi), for the words "Principal Officers", the words "Director General and Financial Commissioner" shall be substituted.

45. For section 99 of the principal Act, the following section shall be substituted, namely:—

Substi-
tution of
new sec-
tion for
section
99.

"99. At any time when its funds so permit, the Corporation may provide or contribute towards the cost of medical care for the families of insured persons."

Medical
care for
the
families
of insu-
red per-
sons.

Omission
of the
First
Schedule.

46. The First Schedule to the principal Act shall be omitted.

Amend-
ment of
the
Second
Schedule.

47. In the Second Schedule to the principal Act,—

(a) after Serial Number 16 and entries relating thereto, the following shall be inserted, namely:—

“16A. Guillotine amputation of the tip of the thumb
without loss of bone 10”;

(b) against Serial Number 27, for the figures “40”, the figures “50” shall be substituted;

(c) against Serial Number 28, for the figures “30”, the figures “50” shall be substituted;

(d) against Serial Number 29, for the figures “30”, the figures “50” shall be substituted;

(e) after Serial Number 32 and entries relating thereto, the following shall be inserted, namely:—

“32A. Partial loss of vision of one eye 10”.

STATEMENT OF OBJECTS AND REASONS

The Employees' State Insurance Act, 1948 provides for grant of cash benefits to the employees in the recognised contingencies of sickness, maternity and employment injury. It also provides for medical benefit, in kind, to the employees and their families. The Act is at present applicable to non-seasonal factories and certain other establishments. The provisions of the Act are being extended, area-wise, in a phased manner. As on 31-12-1988, the Act covered about 61.68 lakhs employees in 580 industrial centres in the country. The total number of beneficiaries including family members for medical care are about 2.73 crores.

2. The Employees' State Insurance Corporation had set up a Sub-Committee in 1975 to make an indepth study of the various provisions of the Act. This Committee had submitted its report to the Corporation in 1978. Another Committee was set up by the Ministry of Labour in 1981 to review the working of the Employees' State Insurance Scheme. This Committee had submitted its report to 1982. The Corporation had considered the reports of both the Committees and broadly endorsed their recommendations. The two committees together had made a number of recommendations involving amendments of the Act. The Corporation had also, from time to time made certain recommendations for amendments of the Act.

3. Based on the above recommendations, it is proposed to carry out certain amendments in the Act. Some of the more important amendments are—

(i) Under the existing provisions, the Act is, in the first instance, applicable to the factories. The Act can be extended to an establishment only after giving six months, notice to that effect. This creates difficulties in implementing the act in the areas where there are very few factories. It is, therefore, now proposed to make the Act applicable simultaneously to factories and other establishments where the Act is applicable in a State to such factories and other establishments in any other parts of the State.

(ii) It is proposed to include children up to the age of 21 years and infirm children without any age restriction in the definition of family so as to make them eligible for medical benefit under the Act.

(iii) The number of representatives of the organisations of employers and employees on the Corporation is being raised from five each to ten each so as to provide greater representation to the employers and the employees on the Corporation.

(iv) At present, the wage ceiling for coverage, rates of contribution, period and conditions of grant of benefits and wage limit for exemption from payment of employees' share of contribution are governed by specific provisions of the Act. Any change in these provisions require amendment of the Act, which usually takes

time. It is, therefore, proposed to provide for specifying all these matters by the Central Government under the rules.

(v) It is proposed to do away with the institution of principal Officers of the Corporation which are to be appointed by the Central Government and to empower the Corporation to make all appointments except that of the Director General and the Financial Commissioner who will continue to be appointed by the Central Government. This is because the other three erstwhile Principal Officers are the career officers from the Corporation itself.

(vi) At present, the Act provides that the Government shall specify the methods of recruitment, salaries and allowances and other conditions of service of officers and the staff of the Corporation. This has resulted in delay in amending the rules even when these conform to changes made in the corresponding rules for the Government servants. It is now proposed to give powers to the Corporation to frame regulations in respect of these matters, subject to the condition that the regulations framed by them would be the same as applicable to the Government servants drawing corresponding scales of pay, and if any deviation is proposed to be made, they would have to seek the approval of the Central Government.

(vii) A provision is being made for setting up of an independent machinery for recovery of arrears of the Employees' State Insurance contributions, etc., as the process of recovery through State machinery has caused a lot of delay.

(viii) It is proposed to make suitable provisions for continuance of medical benefit to insured persons who have to leave the insurable employment due to employment injury and retired insured persons subject to payment of contribution.

(ix) With a view to curb the misuse of cash benefits, it is proposed to make a suitable provision disentitling the insured person from sickness and disablement benefits for any day for which he receives any wages or for any day on which he remains on strike.

(x) To put a curb on unnecessary litigation by the employers, it is proposed to provide that no application from an employer disputing the claim of the Corporation for payment of contribution or other dues shall be entertained by Employees' Insurance Court unless the employer deposits fifty per cent. of the amount claimed to the Court.

(xi) The existing penal provisions are being made more stringent.

(xii) It is proposed to make a suitable provision for withdrawal of the benefit provisions from any factory or establishment, if it is found that the benefits are being misused.

4. The Notes on clauses explain in detail the provisions of the Bill.

5. The Bill seeks to achieve the above objects.

NEW DELHI;

BINDESHWARI DUBEY.

The 11th July, 1989.

Notes on Clauses

Clause 1 relates to short title and commencement of the proposed legislation.

Clause 2 seeks to amend section 1 of the Act so as to enable extension of the provisions of the Act to factories and other establishment simultaneously in certain circumstances. It also provides for exclusion of factories or establishments belonging to or under the control of the Central Government or a State Government from the purview of the Act. It further seeks to provide that a factory or establishment once covered will continue to be covered even if the number of persons employed fall below the prescribed number or the use of power is discontinued.

Clause 3 seeks to amend section 2 and to include apprentices in the definition of employee. It also seeks to empower the Central Government to prescribe the wage limit for coverage of employees under the Act. It further provides for amplifying the definition of family, so as to include son and daughter who are receiving education till he or she attains the age of 21 years and the child who is infirm and is dependent upon the insured person till the infirmity lasts. This clause also seeks to amend the definition of "factory" so as to include factories run with power and employing 10 or more persons and factories run without power and employing 20 or more persons in the definition of "factory". It also seeks to add a separate definition of "seasonal factory".

Clause 4 seeks to substitute the word "nominated", etc., used in Chapter II of the Act by the word "appointed", etc., so as to facilitate the appointment of official members by designation.

Clause 5 seeks to raise the number of representatives of the employers and employees on the Employees' State Insurance Corporation from five each to ten each.

Clause 6 seeks to amend section 16 and to do away with the institution of Principal Officers of the Corporation, who are at present appointed by the Central Government and to provide for appointment of only the Director General and the Financial Commissioner of the Corporation by the Central Government.

Clause 7 seeks to amend section 17 and to provide for prescribing the salary limit for creation of posts by the Corporation in the rules. It also seeks to empower the Corporation to frame regulations relating to method of recruitment, pay and allowances, discipline in respect of the officers and staff of the Corporation subject to restrictions provided therein. This clause further seeks to take out the medical post in the Corporation from the purview of the Union Public Service Commission and to provide that appointments made without consultation with the Union Public Service Commission shall be treated as purely Officiating or Temporary and will not confer any claim for regular appointment.

Clause 8 seeks to substitute the words "Principal Officer" by the words "Director General and the Financial Commissioner".

Clause 9 seeks to insert a new section 28A for prescribing the expenses which may be termed as administrative expenses and the limit up to which the Corporation may incur expenditure on administration.

Clause 10 seeks to amend section 34 and to provide for audit of the accounts of the Corporation by the Comptroller and Auditor-General of India and submission of the accounts together with audit report and the Corporation's comments thereon to the Central Government.

Clause 11 seeks to amend section 36 and to provide for laying of the report of the Comptroller and Auditor-General and the comments of the Corporation thereon before the Parliament. It also seeks to do away with the practice of publishing annual report, audit report and budget of the Corporation in the Gazette of India.

Clause 12 seeks to amend section 39 and to provide for specifying the rates of contribution payable by the employees and employers in the rules. It also seeks to provide for recovery of simple interest at the rate of twelve per cent. per annum or at such higher rate as may be specified in regulations on the contribution paid after the due date.

Clause 13 seeks to amend section 41 and to provide that immediate employer shall maintain a register of employees engaged by him and submit the same to the principal employer before settlement of his account.

Clause 14 seeks to amend section 42 and to provide for specifying the exemption limit for payment of employees' share of contribution in the rules. It also seeks to provide for defining the term "average daily wages" in the rules.

Clause 15 seeks to amend section 45A and to provide that no order for payment of dues shall be passed, unless the employer has been given an opportunity to be heard. It also seeks to provide that an order made by the Corporation shall be sufficient proof for recovery of contribution under sections 45C to 45-I.

Clause 16 seeks to insert new sections 45C to 45I as indicated below:—

Sections 45C to 45F provide for the detailed procedure for recovering the amount due from the factory, establishment or employer by attaching and selling the movable or immovable property of the factory, establishment or the employer or by effecting arrest and detention of the employer or by appointing a receiver for the management of the properties of the factory, establishment or the employer or the issue of a certificate by the authorised officer to the Recovery Officer. These provisions also lay down the detailed procedure to be followed by the authorised officer to issue the certificate and the Recovery Officer who would effect the recovery of the amount due from the employer.

Section 45G empowers the Director General to recover the amount due from the employer, from any other person and from

whom money is due to the employer and provides for detailed procedure to be followed and for other connected matters.

Section 45H seeks to apply the provisions of the Second and Third Schedules of the Income-tax Act, 1961 and Income Tax (Certificate Proceedings) Rules, 1962 for the purpose of effecting the recovery of any amount due from the employer.

Section 45-I seeks to define the term "authorised officer" and "Recovery Officer".

Clause 17 seeks to amend section 46 and to change the name of "funeral benefit" to "funeral expenses". It also provides for prescribing the rates of funeral expenses in the rules.

Clause 18 seeks to omit section 47 which has become redundant.

Clause 19 seeks to substitute sections 49 and 50 and to provide for specifying the conditions, rates and duration of the sickness benefit and the maternity benefit in the rules.

Clause 20 seeks to amend section 51 and to provide for specifying the conditions, rates and duration of disablement benefit in the rules.

Clause 21 seeks to amend section 52 and to provide for specifying the conditions, rates and duration of dependents' benefit in the rules.

Clause 22 seeks to amend section 54A and to provide that once an insured person has applied for and received lump sum commuted value of the disablement benefit, no appeal shall be entertained from him against the order of commutation. Conversely, no appeal by the Corporation shall also be entertained.

Clause 23 seeks to amend section 56 and to provide for continuance of medical benefit to an insured person who has to leave the insurable employment due to permanent disablement. It also seeks to provide for extension of medical benefit to retired insured person. In both the cases, grant of medical benefit would be subject to payment of contribution and such other conditions as may be prescribed by the Central Government.

Clause 24 seeks to amend section 62 and restrict the commutation in cases of disablement benefit only.

Clause 25 seeks to substitute section 63 and to disentitle the insured person from sickness or disablement benefit for temporary disablement for any day on which he works and remains on leave or on holiday in respect of which he receives any wages or any day on which he remains on strike.

Clause 26 seeks to omit the words "sick visitor" from section 64.

Clauses 27 and 28 seek to make certain consequential amendments in sections 70 and 71.

Clause 29 seeks to make a suitable provision in section 75 providing that no application from an employer against a claim for recovery of

contribution shall be entertained by Employees' Insurance Court, unless he deposits fifty per cent. of the dues claimed by the Corporation.

Clause 30 seeks to amend section 77 and to provide that a cause of action in respect of a claim of the Corporation will be deemed to have arisen on the date on which claim is made by the Corporation for the first time provided that the Corporation shall not make any claim after five years from the date on which it had arisen.

Clause 31 seeks to amend section 82 and to bring the reference to Limitation Act up to date.

Clauses 32, 33 and 34 seek to amend sections 84, 85, and 85A respectively with a view to make the existing penal provisions more stringent.

Clause 35 seeks to amend section 85B to provide for specifying the amount of damages in the regulations. It also seeks to provide for reduction or waiver of the damages by the Corporation in certain circumstances subject to such terms and conditions as may be specified in the regulations.

Clause 36 seeks to amend section 85C and to provide that if an employer does not furnish the return relating to contribution, he shall be liable to penalty. It also seeks to make the penalty specified in the section more stringent.

Clause 37 seeks to amend section 86 and to provide that no court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the First Class shall try any offence under the Act. It also seeks to omit the limitations of six months specified in the section, for filing prosecution, so as to make the limitation specified in the Code of Criminal Procedure applicable for offences under the Act.

Clause 38 seeks to insert a new section 86A relating to offences by companies.

Clause 39 seeks to amend section 90 and to omit the word "Government."

Clause 40 seeks to insert new sections 91B and 91C making an enabling provision for withdrawal of the benefits available to the employees of a factory or establishment, if such benefits are found to have been misused and empowering the Corporation to write off loans.

Clause 41 seeks to amend section 92 and to provide for issue of directions by the Central Government to the Corporation for efficient administration of the Act.

Clause 42 seeks to amend section 94 and to bring the reference to the Indian Companies Act up to date.

Clause 43 seeks to amend section 95 and to specify the various purposes for which the Central Government may make rules.

Clause 44 seeks to amend section 97 and to do away with the requirement of prior approval of the Central Government for framing of re-

gulations by the Corporation. It also seeks to specify the various purposes for which the Corporation may frame regulations.

Clause 45 seeks to substitute section 99 and to provide for the medical care for the families of insured person.

Clause 46 seeks to omit the First Schedule of the Act.

Clause 47 seeks to insert one new entry in the list of injuries specified in the Second Schedule and to modify the percentage of loss of earning capacity in respect of some of the existing entries.

FINANCIAL MEMORANDUM

Clause 5 of the Bill seeks to amend section 4 of the Act and to provide for raising the number of representatives of employers and employees on the Employees' State Insurance Corporation from five each to ten each. These members would have to paid travelling allowance and daily allowance for attending meetings of the Corporation, which normally meets twice a year. The recurring expenditure involved on this account is estimated at Rs. 1.25 lakhs per annum.

2. Clause 10 of the Bill provides for entrusting the audit of the accounts of the Corporation to the Comptroller and Auditor-General of India and payment of the cost of audit by the Corporation. The recurring expenditure on this account is estimated at Rs. 12 lakhs per annum. However, as the audit of the accounts are even at present being carried on by the Comptroller and Auditor-General on consent basis, there will be no additional expenditure on this account.

3. Clause 16 of the Bill seeks to insert new section 45C to 45-I. These sections empower the Employees' State Insurance authorities to recover the arrears of Employees' State Insurance dues. For this purpose, suitable machinery will have to be set up in all the seventeen Regional Sub-Regional Offices of the Corporation, where there are arrears of more than rupees one crore, and the headquarters office in Delhi. The recovery machinery in each State may be headed by an officer of the rank of Deputy Regional Director in the scale of pay of Rs. 2200—4400. The headquarters office in Delhi may have an officer in the grade of Rs. 3700—5000 to supervise the working of recovery machinery in the States. All these officers will have to be provided with suitable supporting staff like Inspectors, Personal Assistants, Upper Division Clerks, Lower Division Clerks and Peons. The total posts required including those of officers will be about 142. The entire staff requirement of the proposed recovery machinery will be provided by suitable re-deployment of the existing staff. There would not, therefore, be any additional expenditure on staff. There may, however, be recurring expenditure of about rupees six lakhs per annum on travelling allowance and office expenditure. In addition, there may be non-recurring expenditure of about Rs. 5 lakhs on purchase of furniture and office equipment for the office of the Recovery Officer. There will be no expenditure on payment of rent as recovery machinery will function from the existing offices of the Regional Directors.

4. The total additional expenditure on enforcement of the provisions of clauses 5, 10 and 16 is estimated at Rs. 7.25 lakhs recurring and Rs. 5 lakhs non-recurring. This expenditure will be met from the funds of the Corporation, which derives its income mainly from contributions recovered from employers and employees. The Central Government does not at present provide any financial assistance to the Corporation. The enforcement of the provisions of this Bill would not, therefore, entail any expenditure from the Consolidated Fund of India.

5. This Bill does not involve any other expenditure of recurring or non-recurring nature.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 43 of the Bill seeks to amend section 95 of the Act which empowers the Central Government to make rules. The amendment proposed to sub-section (2) of that section empowers the Central Government to make rules, *inter alia*, relating to—

- (i) the limit of wages beyond which a person shall not be deemed to be an employee;
- (ii) the limit of maximum monthly salary for the purpose of sub-section (I) of section 17;
- (iii) the types of expenses which may be termed as administrative expenses, the percentage of income of the Corporation which may be spent for such expenses;
- (iv) the rates of contributions and limits of wages below which employees are not liable to pay contribution;
- (v) the manner of calculation of the average daily wage;
- (vi) the manner of certifying the certificate to recover amount by Recovery Officer;
- (vii) the amount of funeral expenses;
- (viii) the qualifications, conditions, rates and duration of sickness benefit, maternity benefit, disablement benefit and dependents, benefit;
- (ix) the conditions for grant of medical benefits for insured persons who cease to be in insurable employment on account of permanent disablement;
- (x) the conditions for grant of medical benefits for persons who have attained the age of superannuation; and
- (xi) the period of non-entitlement for cash benefit in case of conviction of an insured person.

2. Clause 44 of the Bill seeks to amend section 97 of the Act which empowers the Corporation to make regulations, for the administration of affairs of the Corporation and for carrying into effect the provisions of the Act. The amendment proposed to that section, *inter alia*, provides for—

- (i) the rate of interest higher than twelve per cent. on delayed payment of contributions;
- (ii) the register of employees to be maintained by the immediate employer;
- (iii) the entitlement of sickness benefit or disablement benefit for temporary disablement on any day on which person works or remains on leave or on holiday and in respect of which he receives wages or for any day on which he remains on strike;

- (iv) the amount of damages to be recovered as penalty; and
- (v) the terms and conditions for reduction or waiver of damages in relation to a sick industrial company.

3. The matters with respect to which rules and regulations may be made are matters of detail and day to day working within the scope of the provisions of the Act. The delegation of legislative power is, therefore, of a normal character.

SUDARSHAN AGARWAL,
Secretary-General.